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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,166	07/17/2003	Heng Cai	IR6514-01	2203

7590 10/11/2006
Patent Department
Colgate-Palmolive Company
909 River Road
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EXAMINER

MARSCHER, ARDIN H

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/622,166

Applicant(s)

CAI ET AL.

Examiner

Ardin Marschel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 39, 42-45, 51-62 and 65-69 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 39, 42-45, 51-62 and 65-69 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- ☐ Notice of Informal Patent Application
- ☐ Other: ____.

DETAILED ACTION

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 1-31 have been renumbered as claims 39-69, respectively, including renumbering of newly presented canceled claims. For clarity the presently pending claims, presented in the preliminary amendment, filed 7/17/03, correspond as follows regarding claim numbering to said amendment, filed 7/17/03:

Claim 1, renumbered as claim 39

Claims 4-7, renumbered as claims 42-45

Claims 13-24, renumbered as claims 51-62

Claims 27-31, renumbered as claims 65-69

TWO SPECIE ELECTION REQUIREMENTS:

FIRST SPECIE ELECTION REQUIREMENT:

This application contains claims directed to the following patentably distinct species of the claimed invention:

Species of component (a) as in instant claim 39:

In claim 39 component (a) of the composition is directed to at least one siliconized polyamide of Formula IIIA. Within these polyamides are a large number of options, each with a distinct chemical formula based on selection of specific moieties for

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DP, n, X, Y and R¹ through R⁴. Each set of moiety selections directs the claimed invention to a different chemical with its own characteristics regarding the instant composition. Each specific chemical results in differing results in the practice of the instant invention as their chemical moieties carry with them their own distinctive characteristics and thus result in an undue search and examination burden if searched together. Applicant is required under 35 U.S.C. 121 to elect a single disclosed specie of a specific set of moieties defining said component (a) in order to start examination for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 39 is generic to the above Species. These species result in different active ingredients being delivered with their corresponding distinct effects that need to be separately examined and searched thus supporting the undue search burden if they are examined together.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

SECOND SPECIE ELECTION REQUIREMENT:

This application contains claims directed to the following patentably distinct species of the claimed invention:

Species of component (c) as in instant claim 39:

In claim 39, component (c) of the composition is directed to the non-silicone organic emollient as listed in claim 39. Within this selection list of emollients are a large number of options each with a distinct chemical formula. Each emollient selection directs the claimed invention to a different chemical with its own characteristics regarding the instant composition. Each specific chemical results in differing results in the practice of the instant invention as their chemical moieties carry with them their own distinctive characteristics and thus result in an undue search and examination burden if searched together. Applicant is required under 35 U.S.C. 121 to elect a single disclosed specie of a specific emollient defining said component (c) in order to start examination for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 39 is generic to the above Species. These species result in different active ingredients being delivered with their

corresponding distinct effects that need to be separately examined and searched thus supporting the undue search burden if they are examined together.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

The inventions are distinct, each from the other because:

The distinctness between the species has been described above.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the Central PTO Fax Center. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993)(See 37 CFR § 1.6(d)). The Central PTO Fax Center number is (571) 273-8300.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ardin Marschel, Ph.D., Supervisory Patent Examiner, AU 1614, whose telephone number is (571)272-0718. The examiner can normally be reached on Monday-Friday from 8 A.M. to 4 P.M.

Any inquiry of a general nature or relating to the status of this application should be directed to Legal Instrument Examiner, Florence Patterson, whose telephone number is (571)272-0544.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 30, 2006

Ardin H. Marschel 9/30/06
ARDIN H. MARSCHEL
SUPERVISORY PATENT EXAMINER